Petition

81-647

No.

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In the Supreme Court of the United States

October Term, 1981

WILLIAM CAMMISANO,
Petitioner,

vs.

UNITED STATES SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI OF WILLIAM CAMMISANO

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QUESTIONS PRESENTED FOR REVIEW

I.

WHETHER THE COURT ERRED IN ITS ORDER OF APRIL 18, 1980, AUTHORIZING THE GRANT OF IMMUNITY TO MR. CAMMISANO AS THE 10-DAY WAITING PERIOD REQUIRED BY 18 U.S.C. §6005 HAD NOT ELAPSED.

II.

WHETHER THE COURT ERRED IN FINDING MR. CAMMISANO IN CONTEMPT, DIRECTING HIS INCARCERATION AND ORDERING INTERRUPTION OF HIS CRIMINAL SENTENCE AS:

A. INCARCERATION FOR CIVIL CONTEMPT AND INTERRUPTION OF MR. CAMMISANO'S SENTENCE VIOLATES HIS PLEA BARGAIN AGREEMENT IN *U.S. v. WILLIAM CAMMISANO,* U.S. DIST. CT., W. DIST. OF MO., #78-00114-01-CR-W-2.

B. INTERRUPTION BY ORDER OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA OF A CRIMINAL SENTENCE PREVIOUSLY IMPOSED IN THE WESTERN DISTRICT OF MISSOURI EXCEEDS THE JURISDICTION OF THE COURT, CONSTITUTES A VIOLATION OF §3568, TITLE 18, UNITED STATES CODE, VIOLATES THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT AND CONSTITUTES AN ABUSE OF DISCRETION.

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REFERENCE TO REPORTS OF OPINIONS BELOW

The opinion of the District of Columbia Circuit has not been officially reported but a copy of the slip opinion is attached as a part of the Appendix.

GROUNDS FOR JURISDICTION OF THE COURT BY WRIT OF CERTIORARI

Petitioner was found to be in civil contempt of the United States District Court for the District of Columbia pursuant to 28 U.S.C. §1364, Senate Actions, after he had been called as a witness before the Senate Permanent Subcommittee on Investigations, invoked the Fifth Amend-

ment, granted immunity pursuant to 18 U.S.C. §6005, and continued to decline to answer the Subcommittee's questions. The sentence imposed by the United States District Court for the Western District of Missouri which petitioner was serving at the time of the finding of contempt was interrupted and petitioner is now serving a term for civil contempt of the U. S. District Court for the District of Columbia which will continue to run to the adjournment of the 97th Congress. The orders and judgments of the District Court were affirmed on appeal by the United States Court of Appeals for the District of Columbia Circuit. The judgment sought to be reviewed was entered by the United States Court of Appeals for the District of Columbia Circuit on May 13, 1981. That court denied a timely motion for rehearing and transfer to the Court En Banc on June 16, 1981. No orders granting an extension of time within which to petition for certiorari have been entered.

Jurisdiction to review the judgment of the Court of Appeals is conferred by Title 28, U.S. Code, §§1254 and 2801(c).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The following Constitutional provisions, statutes and rules are involved and are set out in the Appendix:

Fifth Amendment to the U. S. Constitution

18 U.S.C. §3568

18 U.S.C. §6005

28 U.S.C. §1364, Senate Actions

Rule 35, Federal Rules of Criminal Procedure

STATEMENT OF THE CASE

The proceeding below was a civil action pursuant to 28 U.S.C. §1364, Senate Actions, to enforce a subpoena issued by the Senate Permanent Subcommittee on Investigations.

Petitioner is an inmate of the United States Medical Center for Federal Prisoners and was, until August 3, 1981, serving a 5-year sentence for violation of the Hobbs Act, 18 U.S.C. §1951. That sentence was imposed by the United States District Court for the Western District of Missouri after he had entered a plea of guilty pursuant to a plea bargain. That plea agreement was stated by the Strike Force attorney in the record as follows:

> "MR. HELFREY: As to William Cammisano, your Honor, the government and defense have entered into an agreement of Rule 11, Federal Rules of Criminal Procedure, Section (c)(1)(c) that an appropriate disposition on the basis of his guilty plea would be a sentence of five years' confinement by this Court.
>
> In addition, the government has agreed or has noted that the defendant has expressed his concern about further indictments that the government may be contemplating or planning. The government will represent as part of this deal or agreement that it has no knowledge of any other investigations of the defendant and, therefore, has no intention of recommending any indictment upon facts presently within the knowledge of the government, that is indictment of defendant William Cammisano."

The plea of guilty was entered without a specific admission of guilt pursuant to the procedure approved by this Court in *North Carolina v. Alred*, 400 U.S. 25 (1970).

Mr. Cammisano made the plea bargain based upon the strength of the Government case and his desire to avoid a longer sentence than that bargained for.

On November 30, 1978, the District Court for the Western District of Missouri accepted the plea bargain and imposed the 5-year sentence.

Mr. Cammisano commenced service of the sentence on January 3, 1979, and has been denied parole; his normal expiration date with good time would have been March, 1982.

On April 6, 1980, personnel of the Subcommittee served a subpoena on Mr. Cammisano at the U. S. Medical Center in Springfield, Missouri, directing that he appear before the Subcommittee on April 23, 1980, at 9:00 a.m.

Unknown to Mr. Cammisano the Subcommittee, pursuant to §6005, Title 18, United States Code, notified the Attorney General on April 10, 1980, of its intention to request an order authorizing immunity for Mr. Cammisano before the Subcommittee. Five days later, Phillip Haymann, Assistant Attorney General, Criminal Division, advised Senate Legal Counsel that the Department of Justice had no objection to the proposed grant of immunity and purported to waive the notice requirements of 18 U.S.C. §6005(b)(3).

Three days later, on April 18, 1980, the Subcommittee filed its application with the district court requesting authority to grant immunity to Mr. Cammisano should he refuse to testify before the Subcommittee based upon his Fifth Amendment privilege. The same day, without notice to Mr. Cammisano or hearing, the district court granted the Subcommittee's application and entered the following order:

"On consideration of the application by the Senate Permanent Subcommittee on Investigations, and the memorandum of points and authorities, and exhibits, in support thereof, the Court finds that the procedural requisites set forth in 18 U.S.C. §6005 for an order of the Court have been satisfied. Accordingly, it is

ORDERED that William Cammisano may not refuse to appear and testify before the Senate Permanent Subcommittee on Investigations on the basis of his privilege against self-incrimination, and it is

FURTHER ORDERED that no testimony compelled under this Order (or any information directly or indirectly derived from such testimony) may be used against William Cammisano in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order."

The District Court did not make the specific findings required by §6005(b), Title 18, U.S.C., and it could not have done so as the 10-day period had not elapsed as required by §6005(b)(3). It made no finding concerning waiver of that requirement.

On May 1, 1980, the Subcommittee met and Mr. Cammisano appeared in the custody of U. S. Marshals via writ of habeas corpus ad testificandum and refused to answer the questions of the Subcommittee based on his constitutional rights. The Chairman of the Subcommittee thereafter communicated the court's April 18 order authorizing immunity and Mr. Cammisano continued to refuse to answer the questions of the Subcommittee on the ground that the order was void and invalid, violated the plea agreement in his criminal case, violated his rights to due process of law, equal protection of law, his right of privacy and his right not to incriminate himself.

More than four months elapsed and on September 19, 1980, the Subcommittee filed its application with the district court for order requiring compliance with the Subcommittee subpoena with exhibits and memorandum.

William Cammisano filed his response to the Subcommittee's application and after oral argument, the district court, on October 24, 1980, entered its order directing William Cammisano to appear before the Subcommittee on notice and answer the questions propounded on May 1, 1980, and such other questions to be propounded by the Subcommittee concerning his knowledge of organized crime in Kansas City.

On November 12, 1980, William Cammisano filed his notice of appeal from the October 24 order and he was notified on December 10, 1980, to appear before the Subcommittee on December 15, 1980, to undergo further questioning.

In order to avoid unnecessary expense and a useless procedure, the parties stipulated that Mr. Cammisano would continue to refuse to answer the questions of the Subcommittee based upon the objections made at the May 1, 1980 hearing and on the objections raised in his reply to the Subcommittee's motion.

On December 12, 1980, the Subcommittee filed its motion for order to show cause and for order adjudging William Cammisano in civil contempt and on the same date the district court directed that William Cammisano file a response to that motion and set the matter for hearing.

On December 20, 1980, Mr. Cammisano filed his response to the Subcommittee's motion and on December 29, 1980, after a hearing on the motion and oral argument, Judge Penn of the district court overruled Mr. Cam-

misano's objections and found that he was in civil contempt of the Court's Order of October 24, 1980, directed that he be confined for such contempt until he agreed to answer the Subcommittee's questions or until the adjournment of the 97th Congress, and directed that the period of confinement for contempt should interrupt the criminal sentence which Mr. Cammisano was serving.

Mr. Cammisano filed his notice of appeal from the December 29 order and the appeals were consolidated.

After affirmance by the Court of Appeals and denial of the motion for rehearing, the parties again stipulated that Mr. Cammisano would continue to refuse to answer the questions of the Committee and the district court on July 31, entered its order directing that on August 3, 1981, Mr. Cammisano commence serving a term for civil contempt, directed that the criminal sentence imposed by the United States District Court for the Western District of Missouri be interrupted, and that the term for civil contempt continue until the adjournment of the 97th Congress. Mr. Cammisano remains in Federal custody at the United States Medical Center for Federal Prisoners and is not presently receiving credit against his criminal sentence for the time he is now serving.

This is a case of first impression. It is the first proceeding for enforcement of a Senate Subpoena pursuant to 28 U.S.C. §1364, Senate Actions.

ARGUMENT

I.

Whether the Court Erred in Its Order of April 18, 1980, Authorizing the Grant of Immunity to Mr. Cammisano As the 10-Day Waiting Period Required by 18 U.S.C. §6005 Had Not Elapsed.

Mr. Cammisano, while serving his sentence at the U. S. Medical Center in Springfield, Missouri, was served on April 6, 1980, with a subpoena directing him to appear before the Subcommittee. Four days later the Subcommittee notified the Attorney General of its intention to seek a Court Order granting Mr. Cammisano immunity pursuant to 18 U.S.C. §6005. Five days later, on April 15, the Department of Justice replied, advising that it had no objection to immunization of Mr. Cammisano's testimony and purported to waive the notice requirements of 18 U.S.C. §6005(b)(3). The Committee filed its application for the immunity order on April 18, 1980, and obtained the Court Order authorizing the grant of immunity on the same day.

It is respondent's position that the 10-day notice period is not waivable by the Attorney General or the Subcommittee, as the language of the statute is mandatory and requires that the court find that the 10-day period in fact expired prior to the issuance of the order.

The pertinent portions of §6005, 18 U.S.C., are as follows:

> "(b) Before issuing an order under subsection (a) of this section, a United States district court *shall* find that—
>
> * * *

> "(3) ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order." [Emphasis supplied.]

Here, the Court's Order granting the immunity request did not make the specific findings listed in §6005(b), but simply stated that ". . . the Court finds that the procedural requisites set forth in 18 U.S.C. §6005 for an Order of the Court have been satisfied." Due to the timing of the notice to the Attorney General, and the filing of the application with the district court, it is obvious that the Court could not, in fact, make the finding required by §6005.

It is suggested that the word "shall" is mandatory upon the court and that the 10-day period cannot be waived. In *Anderson v. Yungcau,* 329 U.S. 482, 485, 67 S. Ct. 428, 91 L. Ed. 436 (1946), the Supreme Court stated that the word "shall" is ordinarily the language of command. Similarly, in *Association of Am. Railroads v. Costle,* 562 F. 2d 1310, 1312 [1] (D.C. Cir. 1977), the Circuit Court for the District of Columbia stated that the word "shall" is the language of command in a statute and indicates a mandatory duty. The following additional cases also state the use of the word "shall" generally indicates a mandatory intent. See *Manatee Cty., Fla. v. Train,* 583 F. 2d 179, 182 [2] (5th Cir. 1978); and *Sierra Club v. Train,* 557 F. 2d 485, 489 (5th Cir. 1977).

In *Boyden v. Commissioner of Patents,* 441 F. 2d 1041, 1043 (D.C. Cir. 1970), the court held that the use of the word "shall" in a patent statute precluded the commissioner of patents from utilizing any discretion in determining whether to permit an indigent to file a patent application without paying the requisite filing fee. In that case, the statute provided that the commissioner "shall charge" the fees required by statute.

Judge Sirica has also interpreted the word "shall" as a mandatory direction in passing upon a previous application for Congressional immunity. See *Application of U.S. Senate Select Committee on Presidential Campaign Activities*, 361 F. Supp. 1270, 1275 (D. Ct. D.C. 1973).

The circuit court found that the 10-day waiting period is not for Mr. Cammisano's benefit but for the sole benefit of the Department of Justice, thus he may not object to waiver of the period. The statutory language is clear and immunity cannot be approved unless all the prerequisites have been complied with. The Court of Appeals in its opinion misstates the nature of the 10-day waiting period. The Court of Appeals, at p. 3 of the slip opinion, stated:

> ". . . the Department of Justice informed Senate Legal Counsel that it had no objection to such a court order and that it was waiving the 10-day notice requirement of 18 U.S.C. §6005(b)(3) (1976), under which at least 10 days must elapse between the time the Attorney General is notified of a committee's intention to obtain such an order and the time the request is actually made."

The Court of Appeals thus misconstrued the provisions of §6005(b)(3) as instead of the 10-day period being a waiting period for the filing of the application, the statute clearly requires that prior to issuing the order granting immunity, the court must find that the 10-day notice period has elapsed before any immunity order can be issued. The 10-day waiting period is a jurisdictional prerequisite to the issuance of the immunity order.

The Court of Appeals also placed substantial reliance upon the legislative history of §6005 in reaching its finding that the 10-day period is waivable by the Department of Justice. Where the statute is clear in its terms and requirements, resort to the legislative history is inappropriate

and the letter of the law should be enforced. *U.S. v. American Trucking Associations, Inc.*, 310 U.S. 534, 537 (1940); *U.S. v. Oregon*, 366 U.S. 643, 648 (1961); *Richards v. U.S.*, 369 U.S. 1, 8-9 (1962).

The Court of Appeals in its opinion used the legislative history to justify a finding that the statute did not mean what it said and in effect amended the statute to eliminate one of the requirements for immunity. The Senate wrote the law and could have provided for waiver of the period if it chose. Instead it required a specific finding that the time had elapsed before the order could be issued. The Senate should be required to live with its language and abide by the law.

This is particularly so where an individual is to be deprived of one of the most important Constitutional rights which he possesses. Strict compliance with the letter of the statute should be required. The District Court and the Court of Appeals erred in determining that the 10-day period was properly waived and the grant of immunity should therefore be declared void and invalid.

II.

Whether the Court Erred in Finding Mr. Cammisano in Contempt, Directing His Incarceration and Ordering Interruption of His Criminal Sentence As:

A. Incarceration for Civil Contempt and Interruption of Mr. Cammisano's Sentence Violates His Plea Bargain Agreement in *U.S. v. William Cammisano*, U.S. Dist. Ct., W. Dist. of Mo., #78-00114-01-CR-W-2.

It is Mr. Cammisano's position that his plea bargain in the U. S. District Court for the Western District of Missouri prohibits the grant of immunity, incarceration

for civil contempt, and interruption of his present sentence directed by the District Court's Orders.

On October 23, 1978 when Mr. Cammisano tendered his plea of guilty in the United States District Court for the Western District of Missouri, he did so based upon a plea bargain which, in part, provided that the Government would not file any additional charges against him based upon "the facts presently within the knowledge of the Government."

At the time of sentencing the court approved the plea bargain agreement. Mr. Cammisano has fully performed all things required of him under the plea bargain agreement and the Government is bound by the agreement and the petitioner is entitled to specific performance. *Santabello v. New York*, 404 U.S. 257 (1971); *United States v. Runck*, 601 F. 2d 968 (CA 8 1979).

The tenor of the agreement and intent of the parties was that Mr. Cammisano would accept and serve a 5-year sentence for all matters within the Government's knowledge. He could thereby wipe the slate clean by service of the 5-year term.

The Court of Appeals determined that the plea agreement did not preclude confinement for *civil contempt* as it only made reference to indictments. The bargain and its language, however, shows that Mr. Cammisano was concerned about further investigations and punishments. The parties could not have specifically contemplated a proceeding under §1364, Title 28, U.S.C., Senate Actions, as the statute did not become effective until January 3, 1979, coincidentally the same date on which Mr. Cammisano surrendered to serve his criminal sentence.

It is without question that the matters inquired into by the Senate Subcommittee relate specifically to the facts

and matters which were a part and parcel of the criminal indictment against the defendant and for which he made his plea bargain and the facts and matters inquired into were obviously known to the Government at the time of the plea bargain.

Immunization of Mr. Cammisano and his incarceration for contempt certainly constitutes prosecution and punishment for matters within the knowledge of the Justice Department at the time he entered his plea.

Here the Justice Department, as counsel for the United States, made a bargain with Mr. Cammisano in order to induce his plea. Having made the bargain, received the benefits, and thereafter being unable to bring any additional charges against him, the Justice Department has now turned him over to the Senate Subcommittee for immunization and prosecution for contempt when it could not take any further punitive action against him. The Justice Department should not be permitted to do indirectly, through the United States Senate, what it has agreed not to do directly. The haste with which the Justice Department purportedly waived the 10-day waiting period and the 20-day mandatory delay clearly illustrates the bad faith of the parties involved. If respondent is the type of individual that the Justice Department, the Senate and its witnesses contend, the Justice Department certainly would not have agreed to the immunity request unless it had no ability to further prosecute the respondent. Based upon the facts at bar, it is clear that the Subcommittee and the Department of Justice have colluded to violate the plea bargain agreement.

The authority of the Court to deny the Order applied for by the Senate is clear. *United States v. Paiva*, 294 F. Supp. 742 (D. D.C. 1969). Judge Gasch thoroughly examined the relationships between the various branches

of our Government and found that Federal courts have full authority to require the other branches to honor their bargains, and that the Court could not be called upon to enforce violations of agreements made on behalf of the United States. At page 747, Judge Gasch, in *United States v. Paiva, supra,* stated:

> "Thus, this court recognizes that within the traditional tripartite division there are overlapping areas of effect as well as competency and where as here this overlap appears, necessarily there are dual responsibilities. Not to act would create a void leaving the defendant helpless, the court responsible."

The court continued, quoting from this Court's opinion in *Sherman v. United States,* 356 U.S. 369, 380 (1958):

> "Public confidence in the fair and honorable administration of justice, upon which ultimately depends the value, the rule of law is the transcending value at stake."

If the Government cannot file charges, it cannot punish. By obtaining an agreement limiting the right to file charges Mr. Cammisano limited the ability of the Government to punish him further. Here the Government has filed charges, contempt, and has obtained punishment, incarceration and interruption of the sentence. Such a result is a clear violation of the spirit of the plea bargain. Mr. Cammisano's bargain with the Government should be honored and he should not be further punished for matters within the Government's knowledge at the time of his plea.

B. Interruption by Order of the U.S. District Court for the District of Columbia of a Criminal Sentence Previously Imposed in the Western District of Missouri Exceeds the Jurisdiction of the Court, Constitutes a Violation of §3568, Title 18, United States Code, Violates the Double Jeopardy Clause of the Fifth Amendment and Constitutes an Abuse of Discretion.

The District Court has directed that the service of the criminal sentence imposed on Mr. Cammisano by the U. S. District Court for the Western District of Missouri, will be interrupted, and that he shall be incarcerated for civil contempt until he purges that contempt, or until the 97th Congress adjourns. That Order, in essence, modifies Mr. Cammisano's criminal sentence and provides that he shall not receive credit against that sentence for time served for civil contempt. The Court's Order violates the clear terms of Rule 35, Federal Rules of Criminal Procedure, and the provisions of §3568, Title 18, United States Code. See *United States v. Liddy*, 510 F. 2d 669, 677 (D.C. Cir. 1974, dissenting opinion of Judge MacKinnon).

The comments of Chief Justice Warren in his dissent in *Piemonte v. United States*, 367 U.S. 556, 564 (1960) are appropriate:

> "In my opinion, the Government has subjected the petitioner to unjustifiable harassment. The petitioner has been convicted for his admittedly illegal conduct and is presently paying his debt to society for that conduct. However, not being satisfied with this punishment, The Government sought to extract from the petitioner, under the threat of a contempt conviction, testimony which it could not have compelled at the original trial in 1958, and which it knows

might well endanger petitioner's life and the lives of his loved ones. In my view, the Government's attempt to compel the petitioner to testify about conduct for which he has already been punished, and the District Court's imposition of an additional term in the penitentiary for petitioner's refusal to testify about such conduct represents the type of harassment which violates the spirit of the Double Jeopardy Clause of the Fifth Amendment. Cf. *Abbate v. United States,* 359 U.S. 187, 196 (separate opinion of Mr. Justice Brennan); *Ciucci v. Illinois,* 356 U.S. 571, 573 (dissenting opinion). I think it can fairly be said that the treatment which the petitioner has received from the Government and the District Court falls far short of that fundamental fairness which the Constitution guarantees and to which even the basest prisoner in the penitentiary is entitled. Therefore, even if the Court is unwilling to recognize that the Constitution prohibits the imposition of punishment in a summary proceeding, it ought to exercise its supervisory power over the lower federal courts to rectify the abuse of the summary contempt power which the record in this case makes manifest."

The district court had discretion to refuse sanctions against Mr. Cammisano or to refuse to interrupt his sentence. *In Re Grand Jury Investigation,* 600 F.2d 420, 428 (CA 3 1979).

As indicated in the Court of Appeals' opinion, other circuit courts have approved the interruption of a criminal sentence for the service of a civil contempt sentence. None of those decisions involved a plea bargain such as that made by the Government with Mr. Cammisano and are not in point. The plea bargain and the sentence imposed under it should not be interrupted by the action of the Subcommittee in violation of the terms of the bargain.

CONCLUSION

As noted, this is a case of first impression. The issues involved set the procedures by which the Senate may avoid the Fifth Amendment, force immunity upon an unwilling witness and obtain incarceration for failure to obey its subpoenas. The precedent set below will seriously affect all persons subject to such subpoenas.

The decisions below allow departures from the plain terms of the statute and violate the terms of agreements made by the Government. Important questions of Federal law are involved which have not been settled by this Court. The writ should issue.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 80-2382 & 81-1037

IN THE MATTER OF THE APPLICATION OF THE
UNITED STATES SENATE PERMANENT SUBCOMMITTEE
ON INVESTIGATIONS
WILLIAM CAMMISANO, APPELLANT

Appeals from the United States District Court
for the District of Columbia
(D.C. Miscellaneous No. 80-00102)

Argued March 27, 1981

Decided May 13, 1981

Bruce C. Houdek for appellant.

Charles Tiefer, Assistant Senate Legal Counsel, with whom *Michael Davidson*, Senate Legal Counsel, was on the brief, for appellee.

Before WRIGHT and WILKEY, *Circuit Judges*, and CORCORAN,* *Senior District Judge*.

Opinion for the court filed by *Circuit Judge* WRIGHT.

WRIGHT, *Circuit Judge*: The appellant, William Cammisano, who is currently serving a prison sentence for extortion, was summoned to testify about organized crime before a Senate subcommittee. After he refused to testify despite a grant of immunity, the District Court cited him

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*Of the United States District Court for the District of Columbia, sitting by designation pursuant to 28 U.S.C. § 292(a) (1976).

for civil contempt and imposed a sentence. In this appeal Cammisano argues that the District Court erred in approving the grant of immunity and in sentencing him for civil contempt. Finding both the grant of immunity and the sentence for civil contempt to be proper, we affirm.

I. FACTS

In early April 1980 the Senate Permanent Subcommittee on Investigations voted to hold hearings on mob violence and organized crime. As part of those hearings the Subcommittee sought to obtain the testimony of the appellant, who since January 3, 1979 has been serving a five-year sentence for violation of the Hobbs Act, 18 U.S.C. § 1951 (1976). Accordingly, the Subcommittee issued a subpoena to Cammisano and directed the Senate Legal Counsel to obtain a court order granting Cammisano immunity for testimony to be given before the Subcommittee.[1] Thereafter, on April 10, the Senate Legal Counsel notified the Attorney General of the Subcommittee's intention to seek such a court order.[2] And five days later, on April 15, the Department of Justice informed[3] Senate Legal Counsel that it had no objection to such a court order and that it was waiving the 10-day notice requirement of 18 U.S.C. § 6005(b)(3) (1976), under which at least 10 days must elapse between the time the Attorney General is notified of a committee's intention to obtain such an order and the time the request is actually made. On April 18 Senate Legal Counsel formally applied to

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1. The resolution so directing Senate Legal Counsel is reprinted at Joint Appendix (JA) 14-15.

2. Notice of Intention to Request Orders Conferring Immunity, from Michael Davidson, Senate Legal Counsel, to Attorney General (April 10, 1980), *reprinted at* JA 17.

3. Letter from Philip B. Heymann, Assistant Attorney General, to Michael Davidson, Senate Legal Counsel (April 15, 1980), *reprinted at* JA 18.

the District Court for an order of immunity for Cammisano, an order which the court issued that day.[4]

Cammisano appeared before the Subcommittee on May 1, 1980. He refused, however, to answer any questions other than preliminary ones, such as regarding his name, current address, and criminal record.[5] He repeatedly stated that his refusal to answer questions was based on his rights under the Constitution and the terms of his plea bargain agreement.[6] Following Cammisano's refusal to answer the series of questions, the Subcommittee informed him of the District Court's immunity order, under which Cammisano was granted "use" immunity[7] and di-

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4. The immunity order is reprinted at JA 19. Under its terms Cammisano was ordered "not [to] refuse to appear and testify before the * * * Subcommittee * * * on the basis of his privilege against self-incrimination * * *." Additionally, it provided "that no testimony compelled under th[e] Order (or any information directly or indirectly derived from such testimony) may be used against William Cammisano in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with th[e] Order." Thus, while referred to as an order of immunity, the order not only granted Cammisano immunity, but also compelled his testimony.

5. *See Organized Crime and Use of Violence, Hearings Before the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs*, 96th Cong., 2d Sess. 224-233 (1980) (testimony of William Cammisano).

6. He repeatedly stated:

> I refuse to answer, based on my rights under the U.S. Constitution, including my rights not to incriminate myself, right of privacy, my right to due process of law, equal protection of law, and the plea bargain agreement in my case.

Id. at 228 *passim*.

7. Such immunity is to be contrasted with "transaction" immunity:

> Transaction immunity may be simply described as that which precludes prosecution for any transaction or affair about which a witness testifies. Use immunity, by contrast, is a grant with limitations. Rather than barring a subsequent related prosecution, it acts only to suppress, in any such prosecution, the witness' testimony and evidence derived directly or indirectly from that testimony. Evidence obtained

(Continued on following page)

rected not to refuse to answer any questions on the basis of his right against self-incrimination. Cammisano nevertheless continued to refuse to answer any questions, giving the same objections.

In view of Cammisano's recalcitrance the full Senate, upon the recommendation of the Committee on Governmental Operations,[8] activated the civil enforcement regime established under Section 705 of the Ethics in Government Act of 1978, 2 U.S.C. § 288(d) (Supp. III 1979), 28 U.S.C. § 1364 (Supp. II 1978). By resolution the full Senate directed Senate Legal Counsel to "bring a civil action * * * to enforce the subcommittee's subpena to William Cammisano * * *."[9] Thereupon, Senate Legal Counsel applied to the District Court for the District of Columbia for an order enforcing the subpoena. Over Cammisano's objections the District Court, on October 24, 1980, granted the application and ordered Cammisano to answer the questions of the Subcommittee.[10]

In early December 1980 the Subcommittee accordingly gave Cammisano notice that he would again be called to testify about organized crime. Two days after Cammisano received notice, however, he signed a stipulation with the Subcommittee, providing that if he "appeared before the

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Footnote continued—

> wholly independently of immunized testimony may serve as a basis for prosecuting the witness for activities and transactions including those covered in his own statements.

Application of U.S. Senate Select Committee on Presidential Campaign Activities, 361 F.Supp. 1270, 1274 (D. D.C. 1973).

8. This is the parent committee of the Permanent Subcommittee on Investigations.

9. S. Res. 502, 96th Cong., 2d Sess. (1980), *reprinted at* JA 78.

10. *Senate Permanent Subcommittee on Investigations v. Cammisano*, Misc. No. 80-0102 (D. D.C. Oct. 24, 1980), *reprinted at* JA 184.

Subcommittee * * * he would respectfully refuse to answer"[11] its questions. Having been frustrated again in its effort to obtain the testimony of Cammisano, the Subcommittee, through Senate Legal Counsel, returned to the District Court and moved that it enter, pursuant to Section 705(f)(1) of the Ethics in Government Act, 28 U.S.C. § 1364 (Supp. II 1978), an order holding Cammisano in civil contempt. Over the objections of Cammisano the District Court, on December 29, 1980, held him in contempt and ordered that he be incarcerated until he answered the questions of the Subcommittee.[12] The order stated, however, that the period of incarceration "shall not exceed the period in which the Subcommittee continues to certify an interest in the testimony of Cammisano, and shall end at the adjournment of the 97th Congress."[13]

From this order, and the District Court's earlier order of October 24, 1980,[14] Cammisano appeals to this court, challenging both the validity of the grant of immunity and the lawfulness of the civil contempt sentence.

II. THE IMMUNITY ORDER

The District Court issued its immunity order, under which Cammisano was granted use immunity and compelled to answer the Subcommittee's questions, pursuant

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11. Stipulation Concerning Appearance Before Subcommittee, Stays and Sanctions Pending Appeal, *Senate Permanent Subcommittee on Investigations v. Cammisano*, Misc. No. 80-0102 (D. D.C. Dec. 2, 1980), at 1-2, *reprinted at* JA 212-213.

12. *Senate Permanent Subcommittee on Investigations v. Cammisano*, Misc. No. 80-0102 (D. D.C. Dec. 29, 1980), *reprinted at* JA 268.

13. *Id.* at 1, JA 268. The order additionally stayed the beginning of Cammisano's incarceration until 20 days after the issuance of the mandate of this court in this appeal.

14. Cammisano filed separate appeals from the two orders, but the two appeals were consolidated.

to its authority under Sections 6002 and 6005 of Title 18.[15] Relying on two technical objections, Cammisano argues that the immunity order was invalid under the terms of Section 6005 and that he was accordingly not required to answer the legitimate questions of the Subcommittee.

Cammisano's first argument is that the 10-day notice requirement contained in Section 6005(b)(3) was not satisfied. This subsection reads:

> (b) Before issuing an order under subsection (a) of this section, a United States district court shall find that—
>
> > (3) ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order.

In the instant case the Department of Justice waived the 10-day notice requirement. Thereupon, only eight days after having notified the Attorney General of his intent

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15. 18 U.S.C. § 6005 (1976) authorizes District Courts to issue an order compelling an individual "who has been or may be called to testify or provide other information" before either House of Congress, or committee or subcommittee thereof, "to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination * * *." And under 18 U.S.C. § 6002 (1976), whenever the individual "refuses, on the basis of his privilege against self-incrimination, to testify or provide other information * * * and the person presiding over the proceeding" informs him of the order issued under § 6005, the individual is granted use immunity, *see* note 7 *supra*, and "may not refuse to comply with the order on the basis of his privilege against self-incrimination * * *."

In *Kastigar v. United States*, 406 U.S. 441, 453 (1972), the Supreme Court held that § 6002's grant of use immunity "is coextensive with the scope of the privilege against self-incrimination, and therefore is sufficient to compel testimony over a claim of the privilege." Accordingly, no argument is made in this case that § 6002 violates the Fifth Amendment on the ground that the witness, whose testimony is compelled is only granted use immunity rather than the broader transaction immunity, *see* note 7 *supra*.

to apply to the District Court for an immunity order, Senate Legal Counsel formally made such application. Cammisano argues that the 10-day notice requirement is mandatory, leaving the Department of Justice no discretion to waive it, and that the immunity order was consequently invalid under Section 6005(b)(3).

We must reject Cammisano's narrow interpretation of the notice requirement. The legislative history of Section 6005(b)(3) reflects two purposes behind the 10-day notice requirement.[16] First, a 10-day notice period provides the Department of Justice with "time to 'lobby' for a change of mind"[17] on the part of the congressional committee should the Attorney General object to the grant of immunity. Second, the notice period gives the Attorney General "an opportunity to insulate from the immunity grant any incriminating data already in his files prior

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16. Section 6005 was modeled after a draft provision recommended by the National Commission on the Reform of Federal Criminal Laws, which was appointed by Congress in 1966 to study and recommend improvements in the federal criminal laws. *See Measures Relating to Organized Crime, Hearings on S. 30, S. 974, S. 975, S. 976, S. 1623, S. 1624, S. 1861, S. 2022, S. 2122, and S. 2292 Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary*, 91st Cong., 1st Sess. 292 (1969) (draft provision § 4). The enacted version contained no substantive differences from the draft provision. Moreover, the sponsors of the companion bills in the House and Senate containing what is now § 6005 were all members of the National Commission on the Reform of Federal Criminal Laws. *See* S. Rep. No. 617, 91st Cong., 1st Sess. 55 (1969). Accordingly, in determining the legislative intent behind § 6005(b)(3) we place great emphasis on the discussion of the model provision in the Commission's Working Papers. We are not the first court to place such reliance on those Papers. *See Application of U.S. Senate Select Committee on Presidential Campaign Activities, supra* note 7, 361 F.Supp. at 1275.

17. II WORKING PAPERS, NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS 1406 (1970); *see id.* at 1442; *Application of U.S. Senate Select Committee on Presidential Campaign Activities, supra* note 7, 361 F.Supp. at 1277.

to the witness' testimony."[18] As is evident from these twin aims, the 10-day notice requirement was plainly intended to benefit *solely* the Department of Justice. And in view of that intent, it would be anomalous to hold that the notice requirement cannot be waived by the Department, its sole intended beneficiary, but must instead be administered in a manner antithetical to the interests of the Department. We decline to adopt such a bizarre rendering of Section 6005(b)(3). Instead we interpret the section consonant with congressional intent and common sense, and hold that the Department may waive the 10-day notice requirement.[19]

In challenging the District Court's immunity order, Cammisano secondly argues that the court improperly issued the order prior to his refusal to answer questions before the Subcommittee. Under Section 6005, Cammisano contends, the District Court may issue immunity orders "only after the witness 'refuses' " to answer questions.[20] Cammisano's contention is undercut, however, by the language of Section 6005(a):

> In the case of any *individual who* has been or *may be called to testify* or provide other information at any proceeding before either House of Congress, or any committee, or any subcommittee of either House, or any joint committee of the two Houses, a United States district court shall issue,

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18. II WORKING PAPERS, *supra* note 17, at 1406; *see Application of U.S. Senate Select Committee on Presidential Campaign Activities, supra* note 7, 361 F.Supp. at 1277.

19. This case is not the first instance in which the District Court for the District of Columbia has issued an immunity order under § 6005 after the Government has waived the notice requirement. *See Application of U.S. Senate Select Committee on Presidential Campaign Activities*, 361 F.Supp. 1282 (D. D.C. 1973).

20. Brief for appellant at 14.

> in accordance with subsection (b) of this section, upon the request of a duly authorized representative of the House of Congress or the committee concerned, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

(Emphasis added.) By its very terms the section permits District Courts to issue an immunity order before the witness has appeared before the congressional body—*i.e.*, "[i]n the case of any individual who * * * may be called to testify * * *."

Cammisano reads Section 6005(a) to the contrary, relying on the language in the section describing the order to be issued as one "requiring such individual to give testimony or provide other information which he *refuses* to give or provide on the basis of his privilege against self-incrimination * * *." (Emphasis added.) But Cammisano is mistaken in construing this language as prohibiting courts from issuing an immunity order prior to the witness' refusal to answer questions. Rather, the language relied on simply means that an immunity order issued under Section 6005 is not effective until the witness refuses to answer questions, although the District Court may have issued the order prior to the witness' appearance.[21]

Any remaining doubt that Section 6005 permits pre-appearance issuances of immunity orders is dispelled by

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21. Indeed, this was the timing of events in the instant case. The District Court issued the immunity order on April 18, 1980, prior to Cammisano's appearance before the Subcommittee on May 1, 1980. The order did not become effective, however, until it was read to Cammisano on May 1, after he refused to answer legitimate questions of the Subcommittee.

the legislative history of the section.[22] In testimony before a House subcommittee the Deputy Director of the Federal Commission that drafted the model provision from which Section 6005 originated[23] stated that the language now contained in Section 6005(a) permits issuance of an immunity order "in advance of the witness' actually appearing under oath and being asked a question."[24] The benefit to be deprived from permitting

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22. Our reading of the section is also buttressed by the holdings of other courts permitting prospective immunity orders under § 6003, which deals with grand jury and court witnesses. *See United States v. Leyva*, 513 F.2d 774, 776 (5th Cir. 1975); *In re Weir*, 520 F.2d 662, 665 (9th Cir. 1975). Significantly, § 6003(a) contains the same language contained in § 6005(a) on which Cammisano relies for his contention that prospective orders are precluded. While Cammisano concedes that prospective orders are authorized under § 6003 as well as under § 6004, which deals with witnesses in administrative proceedings, he distinguishes these two sections from § 6005 on the basis that §§ 6003 and 6004 "contain specific language which authorizes a pre-appearance grant of immunity * * * to an 'individual who has refused or is likely to refuse to testify * * *.'" Brief for appellant at 11 (*quoting* §§ 6003(b) and 6004(b)) (last ellipsis in original). Contrary to the claim of Cammisano, it is not the additional language in §§ 6003(b) and 6004(b) that authorizes prospective immunity orders under §§ 6003 and 6004. The additional language Cammisano cites *limits* the grant of immunity orders to certain situations; it does *not authorize* prospective immunity orders. For example, under § 6004(b) an administrative agency may issue an immunity order

> *only if* in its judgment—
>
> (1) the testimony * * * may be necessary to the public interest; and
>
> (2) such individual has refused or is likely to refuse to testify * * *.

(Emphasis added.) The authority for prospective grants under §§ 6003 and 6004 is instead found in the language of §§ 6003(a) and 6004(a), authorizing orders "[i]n the case of any individual who * * * may be called to testify," language identical to that contained in § 6005(a). *See In re Weir, supra*, 520 F.2d at 665 ("Prospective grants of immunity appear to be contemplated by 18 U.S.C. § 6003(a) * * *.").

23. *See* note 16 *supra*.

24. *Federal Immunity of Witnesses Act, Hearings on H.R. 11157 and H.R. 12041 Before Subcommittee No. 3 of the House Committee on the Judiciary*, 91st Cong., 1st Sess. 70 (1969).

advance orders is obvious. As the Deputy Director pointed out, "[A]n advance order will permit, in those cases where the witness is willing to answer if he is granted immunity, the procedure to go forward without having to convene twice the body before whom he is testifying."[25]

III. THE CIVIL CONTEMPT SENTENCE

Having failed to obtain the testimony of the appellant despite a grant of immunity, the Senate Subcommittee proceeded to seek enforcement of its subpoena through the civil contempt mechanism of Section 705 of the Ethics in Govrenment Act of 1978, 2 U.S.C. § 288(d) (Supp. III 1979), 28 U.S.C. § 1364 (Supp. II 1978). This was the first attempt to do so under the newly enacted law. Prior to 1978 Congress, had only two means of enforcing compliance with its subpoenas: a statutory criminal contempt mechanism[26] and the inherent congressional contempt power.[27] Neither means, however, permitted a witness to challenge judicially "the legality

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25. *Id.*

26. 2 U.S.C. §§ 192, 194 (1976). The criminal contempt statute provides that recalcitrant congressional witnesses may be convicted of a "misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months." *Id.* § 192. Unlike the civil contempt mechanism of the Ethics in Government Act of 1978, the sentence imposed under the criminal contempt statute is punitive rather than coercive in nature.

27. Prior to enactment of the criminal contempt mechanism in 1857, this provided the only procedure for enforcing compliance with congressional subpoenas.

> Under this procedure, the witness who refused to testify was committed to the Sergeant-at-Arms of the respective House until he was willing to "purge" himself of his contempt by supplying the requested information, but his confinement could not extend beyond the term of the session, and could always be challenged by habeas corpus.

United States v. Fort, 443 F.2d 670, 676 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 932 (1971) (footnotes omitted).

of the inquiry or procedures, and then to purge himself of his contempt by testifying if his contentions were not judicially upheld * * *." *United States v. Fort*, 443 F.2d 670, 677 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 932 (1971). Responding to this deficiency, Congress enacted the mechanisms for civil enforcement of Senate subpoenas contained in the Ethics in Government Act of 1978.[28] This new civil enforcement mechanism, employed in this case, is relatively simple. If an individual refuses, or threatens to refuse, to comply with a Senate subpoena, the Senate may request a court order requiring the individual to comply with the subpoena. If the individual continues to disobey the court order, the District Court is directed to initiate a civil contempt proceeding before the court.

Cammisano advances three arguments for reversing the order of the District Court holding him in civil contempt. His first argument is that the action of the District Court violated his 1978 plea bargain agreement. The relevant portion of the plea bargain agreement, as it was stated by the prosecutor, provided:

> [T]he government has agreed or has noted that the defendant has expressed his concern about further indictments that the government may be contemplating or planning. The government will represent as part of this deal or agreement that it has no knowledge of any other investigations of the defendant and, therefore, has no intention of recommending any indictment upon facts presently within the

28. The Act does not, however, include civil enforcement of subpoenas by the House of Representatives. *See* H.R. Rep. No. 95-1756, 95th Cong., 2d Sess. 80 (1978) (Conference Report) (noting that appropriate House committees had not yet considered a "proposal to confer jurisdiction on the courts to enforce" House subpoenas).

> knowledge of the government, that is indictment of defendant William Cammisano.[29]

Cammisano argues that "his incarceration for contempt certainly constitutes prosecution and punishment for matters within the knowledge of the Justice Department at the time he entered his plea."[30]

We are unpersuaded by Cammisano's argument. The terms of the plea bargain agreement plainly do not preclude the Government—in this case the Senate—from seeking to secure the testimony of Cammisano.[31] Moreover, since the plea agreement only precludes *criminal indictments* of Cammisano based on facts then known to the Government, a proceeding and sentence for *civil* contempt would be outside the scope of the agreement.

Cammisano's second argument concerning the contempt sentence is that the District Court, by ordering his incarceration for civil contempt to interrupt the sentence he is currently serving for extortion, violated several provisions of law and abused its discretion. Cammisano's argument is foreclosed, however, by this court's *en banc* decision in *United States v. Liddy*, 510 F.2d 669 (D.C. Cir. 1974), *cert. denied*, 520 U.S. 980 (1975). In *Liddy* this court held it lawful for a civil contempt sentence

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29. JA 130 (transcript of proceedings on October 23, 1978 in *United States v. Cammisano*, Criminal No. 78-00114 (W.D. Mo.)).

30. Brief for appellant at 19. He also vaguely suggests that the grant of immunity violated the terms of the agreement. We reject this claim for the same reasons that we subsequently give for rejecting his argument that the contempt proceeding and incarceration were precluded by the terms of the agreement.

31. *See also Piemonte v. United States*, 367 U.S. 556 (1961) (approving criminal contempt sentence for individual who refused to testify before a grand jury about a crime for which he was previously convicted and other criminal transactions).

to interrupt a criminal sentence previously imposed.[32] Moreover, seven other circuits[33] have adopted a rule permitting civil contempt sentences to interrupt criminal sentences, and "no circuit which has addressed the issue has held otherwise."[34]

Cammisano's final argument is that the civil enforcement mechanism enacted as part of the Ethics in Government Act of 1978 violates the constitutional guarantees of due process and equal protection and permits cruel and unusual punishment, since it "permits the indefinite incarceration of Mr. Cammisano and others proceeded against in similar circumstances for so long as the Senate, its committee or subcommittee certifies a continuing interest in the information."[35] Unfortunately, Cammisano's argument is not properly presented at this juncture, since he does not face unending incarceration. The Subcommittee has only

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32. The court rejected the very contentions that Cammisano makes in this appeal: that interruption of the criminal sentence violates Fed. R. Crim. P. 35, 18 U.S.C. § 3568 (1976), and the Double Jeopardy Clause of the Fifth Amendment.

33. *United States v. Dien*, 598 F.2d 743 (2d Cir. 1979) (*per curiam*); *In re Garmon*, 572 F.2d 1373, 1375-1376 (9th Cir. 1978); *Bruno v. Greenlee*, 569 F.2d 775 (2d Cir. 1978) (*per curiam*); *In re Grand Jury Investigation* (*Appeal of Hartzell*), 542 F.2d 166, 168-169 (3d Cir. 1976), *cert. denied*, 429 U.S. 1047 (1977); *In re Grand Jury Proceedings* (*United States v. Marshall*), 532 F.2d 410, 411-412 (5th Cir.) (*per curiam*), *cert. denied*, 429 U.S. 924 (1976); *Martin v. United States*, 517 F.2d 906 (8th Cir.), *cert. denied*, 423 U.S. 856 (1975); *Williamson v. Saxbe*, 513 F.2d 1309 (6th Cir. 1975) (*per curiam*); *Anglin v. Johnston*, 504 F.2d 1165 (7th Cir. 1974), *cert. denied*, 420 U.S. 962 (1975).

34. *United States v. Dien*, *supra* note 33, 598 F.2d at 745.

35. Brief for appellant at 15-16. Presumably Cammisano takes objection to the following provision in the Act:

> An action, contempt proceeding, or sanction brought or imposed pursuant to this section shall not abate upon adjournment sine die by the Senate at the end of a Congress if the Senate or the committee or subcommittee of the Senate which issued the subpena or order certifies to the court that it maintains its interest in securing the documents, answers, or testimony during such adjournment.

28 U.S.C. § 1364 (Supp. II 1978).

certified continuing interest in his testimony through the end of the 97th Congress,[36] and the District Court held that Cammisano's incarceration under the order here challenged "shall not exceed the period in which the Subcommittee continues to certify an interest in the testimony of Cammisano, and shall end at the adjournment of the 97th Congress."[37]

And even if Cammisano's attack on the constitutionality of the statute were properly presented at this time, we would be compelled to reject it. In *Shillitani v. United States*, 384 U.S. 364 (1966), the Supreme Court recognized that recalcitrant grand jury witnesses may be incarcerated for civil contempt until the end of a grand jury inquiry, and that "the sentences of imprisonment may be continued or reimposed if the witnesses adhere to their refusal to testify before a successor grand jury." *Id.* at 371 n.8. We can see no distinction between that situation and the situation hypothesized by the appellant, where successive civil contempt sentences are imposed on a Senate witness who continues to refuse to answer legitimate questions and where the Senate, or committee or subcommittee thereof, continues to express interest in the witness' testimony.[38]

IV. CONCLUSION

For the foregoing reasons, the orders of the District Court from which Cammisano appeals are

Affirmed.

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36. The Subcommittee so certified on June 25, 1980. *See* JA 233-234 (transcript of Executive Session of the Permanent Subcommittee on Investigations, June 25, 1980).

37. *Senate Permanent Subcommittee on Investigations v. Cammisano*, Misc. No. 80-0102 (D. D.C. Dec. 29, 1980), *reprinted at* JA 268.

38. Of course, if Congress' interest in the witness' testimony continued for an unreasonable number of sessions, the principle of *Shillitani* might perhaps lose much of its force. But that is not the situation presently before us.

(Filed April 18, 1980)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Misc. No. 80-0102

SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, United States Senate, Washington, D.C. 20510,
Applicant.

On consideration of the application by the Senate Permanent Subcommittee on Investigations, and the memorandum of points and authorities, and exhibits, in support thereof, the Court finds that the procedural requisites set forth in 18 U.S.C. §6005 for an order of the Court have been satisfied. Accordingly, it is

ORDERED that William Cammisano may not refuse to appear and testify before the Senate Permanent Subcommittee on Investigations on the basis of his privilege against self-incrimination, and it is

FURTHER ORDERED that no testimony compelled under this Order (or any information directly or indirectly derived from such testimony) may be used against William Cammisano in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order.

/s/ George L. Hart, Jr.
United States District Judge

April 18, 1980

(Filed October 24, 1980)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Misc. No. 80-0102

SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, United States Senate, Washington, D.C. 20510,
Applicant,

v.

WILLIAM CAMMISANO, Springfield Medical Center, Springfield, Missouri,
Respondent.

ORDER

On consideration of the Application by the Senate Permanent Subcommittee on Investigations, Respondent's Reply thereto, the Subcommittee's Response, and the memoranda of points and authorities, and exhibits, in support thereof, it is

ORDERED that upon receiving notice of a Subcommittee hearing to take his testimony, William Cammisano shall appear before the Subcommittee, and shall answer the questions propounded on May 1, 1980, and other questions to be propounded by the Subcommittee concerning his knowledge of organized crime in Kansas City.

/s/ George L. Hart, Jr.
United States District Judge

10/24/80

(Filed December 29, 1980)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Misc. No. 80-0102

SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, United States Senate, Washington, D.C. 20510,
Applicant,

vs.

WILLIAM CAMMISANO, Springfield Medical Center, Springfield, Missouri,
Respondent.

ORDER

On consideration of the Motion by the Senate Permanent Subcommittee on Investigations, Respondent's Reply thereto, the Subcommittee's Response, and the memoranda of points and authorities, and exhibits, in support thereof, it is

ORDERED that William Cammisano is in civil contempt of this Court's Order of October 24, 1980, for refusing to answer the Subcommittee's questions concerning his knowledge of organized crime in Kansas City at the Subcommittee's hearing on December 15, 1980.

IT IS FURTHER ORDERED that William Cammisano, pursuant to the provisions of 28 U.S.C. §1364, is to be confined in a suitable place until such time as he is willing

to answer the Subcommittee's questions propounded on May 1, 1980, and to be propounded concerning his knowledge of organized crime in Kansas City. The period of confinement under this order shall not exceed the period in which the Subcommittee continues to certify an interest in the testimony of Cammisano, and shall end at the adjournment of the 97th Congress. The period of confinement under this order will interrupt the period of Cammisano's confinement under the sentence in *United States v. William Cammisano and Joseph Cammisano,* No. 78-0D114-CR-W-2 (W.D. Mo.) and the period of confinement under this order will not be applied to reduce the time remaining to be served on that sentence.

IT IS FURTHER ORDERED that the confinement under this order shall be stayed until twenty days after the issuance of the mandate of the Court of Appeals in appeals from the Order of October 24, 1980, and from this order, during which twenty day period Cammisano will be afforded an opportunity to appear before this Court to purge himself of contempt.

/s/ John Garrett Penn
United States District Judge

(Filed July 31, 1981)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Misc. No. 80-0102

SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, United States Senate,
Washington, D.C. 20510,
Applicant,

vs.

WILLIAM CAMMISANO, Springfield Medical Center,
Springfield, Missouri,
Respondent.

ORDER

On consideration of respondent's motion to discharge from finding of contempt, applicant's motion to implement the Order of December 29, 1980, and the responses and exhibits thereto, and it appearing that William Cammisano was afforded an opportunity to appear before this Court on July 31, 1981, to purge himself of civil contempt by agreeing to answer the question of Senate Permanent Subcommittee on Investigations concerning organized crime in Kansas City, but freely waived such an appearance by signed stipulation and continued to refuse to answer the Subcommittee's questions, it is this 31st day of July, 1981.

ORDERED that respondent's motion to discharge from finding of contempt is denied, and that applicant's motion to implement the Order of December 29, 1980 is granted, and it is

FURTHER ORDERED that the period of William Cammisano's confinement under the Order of December 29, 1980, which interrupts the period of Cammisano's confinement under the sentence in *United States v. William Cammisano and Joseph Cammisano*, No. 78-0D114-CR-W-2 (W.D. Mo.) shall commence on August 3, 1981, and shall end, unless otherwise terminated under the terms of the Order of December 29, 1980, on the date of the adjournment sine die of the Senate at the end of the 97th Congress.

/s/ George L. Hart, Jr.
United States District Judge

U.S. CONSTITUTION

Amendment V—Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process; Just Compensation for Property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

UNITED STATES CODE

Criminal Procedure

18 U.S.C. § 3568. Effective date of sentence; credit for time in custody prior to the imposition of sentence

The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of such sentence. The Attorney General shall give any such person credit toward service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed. As used in this section, the term "offense" means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable in any court established by Act of Congress.

If any such person shall be committed to a jail or other place of detention to await transportation to the place at which his sentence is to be served, his sentence shall commence to run from the date on which he is received at such jail or other place of detention.

No sentence shall prescribe any other method of computing the term.

(As amended Sept. 2, 1960, Pub.L. 86-691, § 1(a), 74 Stat. 738; June 22, 1966, Pub.L. 89-465, § 4, 80 Stat. 217.)

Immunity of Witnesses

18 U.S.C. § 6005. Congressional proceedings

(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before either House of Congress, or any

committee, or any subcommittee of either House, or any joint committee of the two Houses, a United States district court shall issue, in accordance with subsection (b) of this section, upon the request of a duly authorized representative of the House of Congress or the committee concerned, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

(b) Before issuing an order under subsection (a) of this section, a United States district court shall find that

(1) in the case of a proceeding before either House of Congress, the request for such an order has been approved by an affirmative vote of a majority of the Members present of that House;

(2) in the case of a proceeding before a committee or a subcommittee of either House of Congress or a joint committee of both Houses, the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee; and

(3) ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order.

(c) Upon application of the Attorney General, the United States district court shall defer the issuance of any order under subsection (a) of this section for such period, not longer than twenty days from the date of the request for such order, as the Attorney General may specify.

(Added Pub.L. 91-452, Title II, § 201(a), Oct. 15, 1970, 84 Stat. 928.)

28 U.S.C. § 1364.[1] Senate actions

(a) The United States District Court for the District of Columbia shall have original jurisdiction, without regard to the amount in controversy, over any civil action brought by the Senate or any authorized committee or subcommittee of the Senate to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal or failure to comply with, any subpoena or order issued by the Senate or committee or subcommittee of the Senate to any entity acting or purporting to act under color or authority of State law or to any natural person to secure the production of documents or other materials of any kind or the answering of any deposition or interrogatory or to secure testimony or any combination thereof. This section shall not apply to an action to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal to comply with, any subpoena or order issued to an officer or employee of the Federal Government acting within his official capacity.

(b) Upon application by the Senate or any authorized committee or subcommittee of the Senate, the district court shall issue an order to an entity or person refusing, or failing to comply with, or threatening to refuse or not to comply with, a subpoena or order of the Senate or committee or subcommittee of the Senate requiring such entity or person to comply forthwith. Any refusal or failure to obey a lawful order of the district court issued pursuant to this section may be held by such court to be a contempt thereof. A contempt proceeding shall be commenced by an order to show cause before the court why the entity or person refusing or failing to obey the court order should not be held in contempt of court. Such con-

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1. Other sections 1364 are set out preceding and following this section.

tempt proceeding shall be tried by the court and shall be summary in manner. The purpose of sanctions imposed as a result of such contempt proceeding shall be to compel obedience to the order of the court. Process in any such action or contempt proceeding may be served in any judicial district wherein the entity or party refusing, or failing to comply, or threatening to refuse or not to comply, resides, transacts business, or may be found, and subpoenas for witnesses who are required to attend such proceeding may run into any other district. Nothing in this section shall confer upon such court jurisdiction to affect by injunction or otherwise the issuance or effect of any subpoena or order of the Senate or any committee or subcommittee of the Senate or to review, modify, suspend, terminate, or set aside any such subpoena or order. An action, contempt proceeding, or sanction brought or imposed pursuant to this section shall not abate upon adjournment sine die by the Senate at the end of a Congress if the Senate or the committee or subcommittee of the Senate which issued the subpoena or order certifies to the court that it maintains its interest in securing the documents, answers, or testimony during such adjournment.

(c) In any civil action or contempt proceeding brought pursuant to this section, the court shall assign the action or proceeding for hearing at the earliest practicable date and cause the action or proceeding in every way to be expedited. Any appeal or petition for review from any order or judgment in such action or proceeding shall be expedited in the same manner.

(d) The Senate or any committee or subcommittee of the Senate commencing and prosecuting a civil action or contempt proceeding under this section may be represented in such action by such attorneys as the Senate may designate.

(e) A civil action commenced or presented under this section, may not be authorized pursuant to the Standing Order of the Senate "authorizing suits by Senate Committees." (S.Jour. 572, May 28, 1928).

(f) For the purposes of this section the term "committee" includes standing, select, or special committees of the Senate established by law or resolution.

(Added Pub.L. 95-521, Title VII, § 705(f)(1), Oct. 26, 1978, 92 Stat. 1879.)

FEDERAL RULES OF CRIMINAL PROCEDURE

Judgment

Rule 35. Correction or Reduction of Sentence

(a) Correction of Sentence. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

(b) Reduction of sentence. The court may reduce a sentence within 120 days after the sentence is imposed, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction. The court may also reduce a sentence upon revocation of probation as provided by law. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 30, 1979, eff. Aug. 1, 1979.)

AFFIDAVIT OF MAILING AND SERVICE

STATE OF MISSOURI)
COUNTY OF JACKSON) ss.

Comes now BRUCE C. HOUDEK, being of lawful age and duly sworn and a member of the Bar of the United States Supreme Court and states upon his oath as follows:

On September 11, 1981, he deposited forty (40) copies of the foregoing Petition for a Writ of Certiorari in a United States Post Office with First Class postage prepaid, which were properly addressed to the Clerk of the Supreme Court.

Affiant further states that he has deposited three (3) copies of the foregoing Petition for a Writ of Certiorari in a United States Post Office with First Class postage prepaid, on September 11, 1981, to each of the following:

Mr. Charles Tiefer
Assistant Senate Legal Counsel
1413 Dirksen Senate Building
Washington, D.C. 20510

and to:

Solicitor General
Department of Justice
Washington, D.C. 20530

and that by such service all of the parties to be served have been served.

FURTHER AFFIANT SAITH NOT.

/s/ BRUCE C. HOUDEK
BRUCE C. HOUDEK

Subscribed and sworn to before me this 11 day of September, 1981.

/s/ ROBERTA F. BRANNAN
ROBERTA F. BRANNAN
(Seal) Notary Public

My commission expires: March 13, 1985

No.....

IN THE SUPREME COURT OF THE UNITED STATES
In the matter of the application of

UNITED STATES SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
WILLIAM CAMMISANO,
Respondent-Petitioner.

ENTRY OF APPEARANCE

Comes now BRUCE C. HOUDEK, a member of the bar of this Court, and enters his appearance for Petitioner William Cammisano in this cause.

/s/ BRUCE C. HOUDEK
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Opposition

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No. 81-647

In the Supreme Court of the United States

OCTOBER TERM, 1981

WILLIAM CAMMISANO, PETITIONER

v.

UNITED STATES SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS IN OPPOSITION

MICHAEL DAVIDSON,
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M. ELIZABETH CULBRETH,
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In the Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-647

WILLIAM CAMMISANO, PETITIONER

v.

UNITED STATES SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS IN OPPOSITION

Petitioner William Cammisano seeks review of the judgment below holding him in civil contempt for refusing to obey a District Court order under Section 705 of the Ethics in Government Act of 1978, 28 U.S.C. 1364 (Supp. III 1979) ("the Act") directing him to answer questions of the Senate Permanent Subcommittee on Investigations ("Subcommittee") at a hearing concerning organized crime.

The opinion below has now been published. *In the Matter of the Application of the United States Sen-*

ate Permanent Subcommittee on Investigations, 655 F.2d 1232 (D.C. Cir. 1981) ("*Application of Subcommittee*"). That opinion sets forth the facts in this case, which are not disputed. In April, 1980, the Subcommittee voted to hold hearings on use of violence by organized crime. The Subcommittee desired the testimony of petitioner, who has been serving a five-year sentence following a guilty plea to charges of extortion. Accordingly, the Subcommittee subpoenaed him and took the two steps required by the Organized Crime Control Act of 1970, 18 U.S.C. 6005(b) (1976), to obtain an immunity order for his testimony. First, the Subcommittee's parent committee, the Senate Committee on Governmental Affairs, approved an application for an immunity order by the requisite two-thirds vote. See 18 U.S.C. 6005(b)(2) (1976). Second, on April 10, the Senate Legal Counsel notified the Attorney General of the Subcommittee's intention to apply for the immunity order. Five days later, on April 15, the Assistant Attorney General for the Criminal Division wrote back that the Department of Justice had no objection to an immunity order and waived further delay. See 18 U.S.C. 6005(b)(3) (1976). On April 18, the Subcommittee applied to the District Court for an immunity order, which the Court issued that day.

On May 1, 1980, petitioner appeared at the Subcommittee's hearings. He was immunized under the court order, but refused to answer questions other than to give his name, current address, and criminal

record. Accordingly, the Senate authorized the Subcommittee to apply under the Act to the District Court for an order requiring him to testify. On October 24, the District Court (Hart, J.) ordered petitioner to testify. He refused to obey, and so on December 29, 1980, the District Court (Penn, J.) held him in civil contempt.

On May 13, 1981, a panel of the Court of Appeals (Wright, Wilkey, and Corcoran, JJ.) unanimously affirmed the District Court's orders granting immunity, requiring testimony, and holding petitioner in civil contempt. *Application of Subcommittee, supra.* In June and July, 1981, the Court of Appeals denied petitioner's suggestion of rehearing en banc and issued its mandate, and on August 3, 1981, petitioner began his civil contempt incarceration. The contempt incarceration interrupts his prior sentence for extortion, which he will resume serving at the end of the contempt incarceration.[1]

This case does not present an issue warranting review by this Court. Petitioner does not contend that there is any conflict among the rulings of the Circuit Courts of Appeals pertaining to the issues in this case. He no

[1] On June 30, 1981, petitioner moved in District Court for discharge from contempt on grounds not involved in this petition. The District Court denied that motion. Petitioner has appealed that denial; his appeal has been briefed and is awaiting summary disposition or argument. *In the Matter of the Application of United States Senate Permanent Subcommittee on Investigations, William Cammisano, Appellant*, No. 81-1898 (D.C. Cir. docketed August 10, 1981).

longer presses any constitutional challenge to the Act.[2] The Act provides a procedure for civil enforcement of Senate subpoenas which follows the familiar procedure for civil enforcement of court and grand jury subpoenas, and the Subcommittee carefully followed that procedure.[3] The issues petitioner seeks to raise concern only the construction of the immunity statute and the Act's application to him in the particular circumstances of this case.

The District Court and Court of Appeals considered the three statutory issues petitioner seeks to raise and correctly ruled against him on each one. First, petitioner contends that the District Court should not have issued an immunity order for him, because the immunity statute requires that the District Court "shall find" that "ten days or more prior to the day on which the request for such an order was made,

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[2] In the District Court and the Court of Appeals, petitioner challenged the Act as unconstitutional, claiming he might be subjected to "unending incarceration" if the Subcommittee's interest in his testimony continued indefinitely. Since the Subcommittee has certified an interest in his testimony only until the adjournment of the 97th Congress, the District Court's civil contempt order terminates incarceration by then. The Court of Appeals therefore concluded that "Cammisano's argument is not properly presented at this juncture, since he does not face unending incarceration." *Application of Subcommittee*, 655 F.2d at 1239 (Pet. A14). Petitioner no longer presses that constitutional challenge in his petition for a writ of certiorari.

[3] In providing for civil enforcement of Senate subpoenas, the Act supplements the longstanding inherent contempt and criminal contempt mechanisms for enforcing such subpoenas. See *Application of Subcommittee*, 655 F.2d at 1238 (Pet. A11). It is modeled in large measure upon the statute for court and grand jury subpoenas, 28 U.S.C. 1826 (1976). *See generally United States* v. *Dionisio*, 410 U.S. 1 (1973).

the Attorney General was served with notice of an intention to request the order." 18 U.S.C. 6005(b)(3) (1976). Petitioner correctly states that the Subcommittee notified the Attorney General on April 10 and applied for an immunity order on April 18—only eight days, not ten days, after notice to the Attorney General. However, as described above, the Department of Justice waived further delay on April 15. As the Court of Appeals concluded from its review of the legislative history of the immunity provision in the Organized Crime Control Act of 1970, "the 10-day notice requirement was plainly intended to benefit *solely* the Department of Justice. And in view of that intent, it would be anomalous to hold that the notice requirement cannot be waived by the Department, its sole intended beneficiary, but must instead be administered in a manner antithetical to the interests of the Department." *Application of Subcommittee*, 655 F.2d at 1236 (Pet. A8).[4]

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[4] Petitioner argues with respect to the wording of 18 U.S.C. 6005(b) that "the word 'shall' is mandatory upon the court and that the 10-day period cannot be waived." Petition for a Writ of Certiorari for William Cammisano ("Pet.") at 9. The meaning of the word "shall" depends on what Congress intended in framing the immunity statute; "[u]ndoubtedly, 'shall' is sometimes the equivalent of 'may' when used in a statute prospectively affecting government action." *Richbourg Motor Co.* v. *United States*, 281 U.S. 528, 534 (1930).

By requiring that Congressional committees notify the Attorney General before they apply for immunity orders, Congress guaranteed an opportunity for the Justice Department to lobby against inappropriate immunizations, and to protect evidence for future prosecutions against "taint" by immunized testimony. *Cf. Kastigar* v. *United States*, 406 U.S. 441, 460 (1972) (prosecutorial burden to show absence of taint from

Second, petitioner contends that civil contempt incarceration violated the plea bargain agreement underlying his plea of guilty to extortion charges in 1978. However, in *Piemonte* v. *United States,* 367 U.S. 556 (1961), this Court held that a convict who has pled guilty to a criminal offense can be required later to give testimony, on penalty of contempt, about his criminal offense and other transactions, because a refusal by him to testify would be independent of the original offense. As the Court of Appeals concluded from its examination of petitioner's plea agreement, "The terms of the plea bargain agreement plainly do not preclude the Government—in this case the Senate—from seeking to secure the testimony of Cammisano." *Application of Subcommittee,* 655 F.2d at 1239 (Pet. A13).

Finally, petitioner argues that his civil contempt incarceration should not interrupt his prior extortion sentence. However, if civil contempt incarceration does not interrupt a recalcitrant prisoner's ongoing sentence, it will not coerce obedience to a court order, because the prisoner will simply serve his contempt incarceration simultaneously with his ongoing sentence, thus denying to the courts the power to enforce their orders civilly against prisoners. Eight of the Circuit Courts of Appeals have held that civil contempt can interrupt an ongoing sentence, and in-

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immunized testimony). When the Justice Department does not need the full ten days to lobby or to protect evidence, "consonant with congressional intent and common sense . . . the Department may waive the 10-day notice requirement." *Application of Subcommittee*, 655 F. 2d at 1236 (Pet. A8).

deed "no circuit which has addressed the issue has held otherwise." *United States* v. *Dien,* 598 F.2d 743, 745 (2d Cir. 1979) (collecting precedents).

The decisions of the District Court and the Court of Appeals were plainly correct. No issue has been raised warranting review by this Court. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Petitioner's Reply Brief

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No. 81-647

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UNITED STATES SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Respondent.

ON PETITION FOR A WRIT OF CERTORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

ARGUMENT

The Subcommittee, in its memorandum in opposition to the petition, contends that the cause does not present an issue warranting review by the Court as there are no conflicts among the circuit courts. The reason there are no conflicts among the circuit courts is that this is the first proceeding ever instituted pursuant to 28 U.S.C. §1364 Senate Actions and also for the reason that no other circuit will ever pass on the issues presented as the venue for senate subpoena enforcement pursuant to §1364 lies solely in the district of Columbia. Contrary to the Subcommit-

tee's contention, petitioner has suffered a violation of his previous plea bargain, interruption of the sentence he was serving and summary incarceration for civil contempt without the usual constitutional guarantees in criminal proceedings.

At page 5 of its memorandum, the Subcommittee acknowledges that it notified the Attorney General on April 10 of its intent to seek immunity for petitioner and applied for an immunity order in the district court on April 18. The Subcommittee, however, fails to note that the immunity order was granted the same day the application was filed and thus the ten day period which the district court must find has passed could not have expired prior to granting of the order.

The Court of Appeals incorrectly held that the ten day notice period was waivable by the Department of Justice. This holding was made in the face of the statutory requirement that the district court must find that the ten day period expired prior to issuance of any immunity order. A reading of 18 U.S.C. §6005(b) shows that the ten day period must expire prior to issuance of any immunity order. The waiting period which is waivable under the statute is that specified in 18 U.S.C. §6005(c) which provides for a maximum twenty day delay at the request of the Department of Justice. The statute providing for a clearly waivable period should not be construed to permit waiver of other periods not made waivable.

The Subcommittee cites *Richbourg Motor Co. v. United States,* 281 U.S. 528, 534 (1930), for the proposition that the word "shall" in 18 U.S.C. §6005(b) does not mean shall but means may. The *Richbourg* decision, however, dealt with the prosecutorial function and did not deal with a required judicial finding specified in §6005(b).

Finally, the Subcommittee contends that this Court's decision in *Piemonte v. United States*, 367 U.S. 556 (1961), authorizes the interruption of petitioner's bargained for sentence by service of the civil contempt term. That decision is not on point for two reasons. First, Piemonte was not serving a sentence imposed pursuant to a plea bargain agreement as is petitioner and second, the eighteen month term for contempt was ordered to be served at the conclusion of the sentence Piemonte was serving at the time he was summoned before the grand jury. See 367 U.S. 556 at 559. Here the petitioner's sentence has been interrupted.

Petitioner plea bargained for a five year sentence. The government should not be permitted either by way of the Senate Subcommittee or by the Justice Department to violate the plea bargain and interrupt the sentence bargained for. None of the previous decisions of any court where a sentence was interrupted involved a bargained for term.

This is a matter of first impression involving the derogation of important rights guaranteed by the constitution. The interpretation and construction of the statutes involved will affect the rights of all persons subject to senate subpoenas. The matter should be reviewed by the Court.

Respectfully submitted,

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